

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MATTER OF: CONTROVERSY

BRANTLEY CONSTRUCTION COMPANY

v.

COLLEGE OF CHARLESTON

SIMONS ART CENTER EXPANSION
STATE PROJECT NO. H15-9570-PG

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

ORDER APPROVING SETTLEMENT

CASE NO. 2011-012

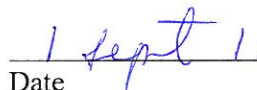
POSTING DATE:
SEPTEMBER 1, 2011

This matter came before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by Brantley Construction Company (Brantley), under the provisions of Section 11-35-4230 of the South Carolina Consolidated Procurement Code, for an administrative review of a contract controversy regarding the Simons Art Center Expansion ("the Project"), for the College of Charleston (College). The request for resolution of a contract controversy is attached as Exhibit A.

DECISION

On September 1, 2011, the parties submitted to the CPOC a settlement agreement. This Settlement Agreement is attached as Exhibit B. The CPOC hereby determines the settlement of this matter by the parties is appropriate and approves the settlement agreement as set forth in Exhibit B. Based on the parties' mutual good faith commitment to perform as set forth in the settlement agreement, the CPOC dismisses the request for resolution of a contract controversy.


John St. C. White
Chief Procurement Officer for Construction


Date

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4230, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



**Brantley
Construction
Company, LLC**

DEC 16 2010
OFFICE OF STATE ENGINEER

December 13, 2010

Certified return receipt no. 91 7108 2133 3936 6434 1798

Mr. John White, P.E.
State Engineer
1201 Main Street Suite 600
Columbia, South Carolina, 29201

Subject: Request for Resolution of Contract Controversy, College of Charleston
State Project # H19570-PG, Simons Center for the Arts Expansion

Dear Mr. White:

Brantley Construction Company, LLC, as the prime contractor on the above-referenced Project, requests the State Engineer resolve a controversy between Brantley and the College of Charleston.

The issues include but are not limited to:

- Disagreement over the College of Charleston withholding \$33,263.18
- Acceptance of concrete floor at acid stain floor finish

While the College does not take issue with the acid stain floor finish, they allege, per the Architect's letter of January 20, 2010, the first floor concrete slab on grade where acid stained does not meet specification section 03300 due to the following:

- Insufficient/Non-existent patching of imperfections
- Location, depth, and quality of saw cut control joints
- Non-installation of control joints per Contract Documents
- Poor quality of concrete finish at the north and west entrance

The College claims the cost, now, to prepare the floor and install a new acid stain floor finish is \$33,263.18. The College does not desire a new acid stain floor but rather a high end, tile floor.

Brantley is not responsible for the costs attempting to be assessed by the College to prepare the floor and install a new acid stain floor finish.


8300 Dorchester Road, Charleston, SC 29418 (843) 552-0150 Fax (843) 552-9072
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During the acid stain floor pre-construction meeting, the Architect was advised patching the concrete floor will cause the imperfections to stand out and be noticeable, whereas if not patched, they will blend in with the surrounding areas. The Architect approved installation of the acid stain floor over the existing concrete SOG without requiring patching of the imperfections. The imperfections are aesthetic and not structural. Per the contract documents, the Architect has the authority to make changes in the work and is the final decision regarding aesthetics. His approval of the concrete floor without remediation is confirmed by his subsequent actions on the jobsite through his numerous site visits and inspections including final punch list during the two months required to install the acid stain finish. Throughout this period, he did not require any concrete patchwork in the area in question. Although the work was completed on or about September 23, 2009, the Architect's letter of rejection is dated January 20, 2010. Brantley complied with the contract documents and instructions of the Architect.

Brantley Construction feels they have made a "good faith" attempt to resolve the differences with the College, however to no avail. Therefore, a meeting with all parties concerned is respectfully requested for further discussions in the hopes of reaching an agreement satisfactory to all parties.

Please call to schedule a time and location to meet or if you have any questions.

Best Regards,


Gary D. Brantley,
Vice President

Attached:

Stevens and Wilkinson letter dated January 20, 2010
Stevens and Wilkinson letter dated August 25, 2010
College of Charleston letter dated September 1, 2010
Brantley e-mail dated September 8, 2010
Brantley letter dated November 15, 2010
College of Charleston e-mail dated December 1, 2010

cc: Phil Gerald, OSE
Monica Scott, C of C
John A. Cordray, Jr., C of C
Ken Foreback, C of C
Ralph Beatty, SMG
Dean Moor, S&W
Tom Terranova, BCC-PM

STEVENS WILKINSON
ARCHITECTURE ENGINEERING INTERIORS

1501 Main St. Columbia, SC 29201
Post Office Drawer 7 Columbia, SC 29202
803.765.0320 803.254.6209
www.stevens-wilkinson.com

Gary Brantley
Vice President
Brantley Construction Co., Inc.
8300 Dorchester Road
Charleston, SC 29418

January 20, 2010

Dear Gary:

Please accept this letter as your company's official notification that the colored concrete floor installed at the Simons Center for the Arts Expansion is hereby rejected and deemed unacceptable. While the overall appearance of the color/stain is not necessarily in question, the quality and installation of the concrete slab-on-grade does not meet the project specifications.

In review of the finished product, it is obvious that Specification Section 03300 has not been followed thoroughly –

- Insufficient/non-existent patching of imperfections;
- Location, depth, quality of saw-cut control joints;
- Non-installation of control joints per Contract Documents;
- Poor quality of concrete finish at the north and west entrances.

While it may be beneficial for everyone to re-visit the facility to observe and point out these deficiencies, the finished product is simply not acceptable to our office or the Owner. We are more than willing to meet with you to discuss either the quality of the installation or an avenue toward remediation of this issue.

Sincerely,



Robert E. Hawsey, AIA
Associate Vice President
Project Architect

Cc: John Cordray
Ken Foreback
Ralph Beatty
Ashby Gressette

1501 Main St. Columbia, SC 29201
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T 803.765.0320 F 803.254.6209
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John A. Cordray, Jr.
Director, Physical Plant
College of Charleston
66 George Street
Charleston, SC 29424-0001

August 25, 2010

RE: Simons Art Center Expansion – Stained Concrete Floor Rejection
SPN: H15-9570-PG

Dear John:

As requested in your correspondence dated August 10, 2010, we have contacted several companies and/or contractors to seek their input on costs associated with remedial work at the Simons Art Center Expansion stained concrete floors that have been rejected by both our office and you, the Owner. While it would be beneficial to have contractors visit the facility and observe the in-place work to provide a more thorough estimate, we felt it in the best interest of all involved to keep the project information "generic" and simply request an estimate based upon removing the existing stain, repairing imperfections, and re-installation of concrete stain.

In all instances, each company we spoke with stated the removal of the concrete stain would be nearly impossible without grinding the concrete surface – and even that would not remove all of the stain as the depth of the stain reaction could be deeper in some places than others. Most of them did state, however, that with grinding the surface and re-installation of another stain, it should mask the remainder of the stain from the initial application.

With that in mind, we offer the following as a probable construction cost to remedy the stained concrete flooring at the Simons Art Center Expansion project.

Floor Area: 5,259 square feet (excludes Halsey Gallery).

Concrete Grinding:	\$1.50 per sq. ft. x 5,259 sq. ft. = \$7,888.50
	<i>(includes vertical surfaces at stairs/ramps)</i>
Concrete Staining:	\$4.00 per sq. ft. x 5,259 sq. ft. = \$21,036.00
	<i>(includes additional score joints, replacing wall base)</i>
Sub-total:	<u>\$28,924.50</u>
Contractor's O&P (15%)	\$4338.68
Grand Total	<u>\$33,263.18</u>

STEVENS & WILKINSON
ARCHITECTURE ENGINEERING INTERIORS

03-17-10 P12:30 PM

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We would assume the total time to complete this remedial work to consist of five (5) days worth of grinding and approximately seven (7) days to stain (initial stain coat, inspection, possible touch-up, and final sealer coat). It should be noted that the building cannot be occupied during the staining process due to fumes associated with the stain and sealer coats.

If you have any questions or require additional information with regards to this matter, please do not hesitate to contact us immediately.

Sincerely,



Robert E. Hawsey, AIA
Associate Vice President
Project Architect

Cc: Steve Osborne
Monica Scott
Tom Trimboli
Ken Foreback
Ralph Beatty
Phil Gerald

COLLEGE of CHARLESTON

September 1, 2010

Brantley Construction Company, LLC
8300 Dorchester Road
Charleston, SC 29418

Reference: Cato Stained Concrete Floor

Attention: Gary Brantley

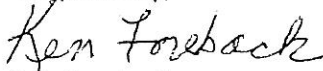
Dear Sir:

Attached is a copy of the letter from Stevens and Wilkinson rejecting the stained concrete floor in the Cato Center for the following reasons, as well as, a letter with the estimated cost to bring the floor into compliance with the specification section 03300.

- Insufficient/Non-existent patching of imperfections. - preparation - concrete finish
- Location, depth, and quality of saw cut control joints. - improper control joints + concrete finish
- Non-installation of control joints per Contract Documents.
- Poor quality of concrete finish at the north and west entrance. -

The amount of \$33,263.18 will be deducted from your retainage.
The College will pursue an alternative repair to the floor.

Respectfully,



Ken Foreback

CC: Monica Scott, Vice President of Facility Planning
Steve Osborne Vice President of Business Affairs
John Cordray, Director Physical Plant
Tom Trimboli, Legal affairs
Ralph Beatty, CSMG
Phil Gerald, OSE

Gary Brantley

From: Gary Brantley [GBrantley@BrantleyConstruction.com]
Sent: Wednesday, September 08, 2010 8:32 AM
To: 'Foreback, Kenneth L'
Cc: 'TTerranova@BrantleyConstruction.com'; 'rbeatty@southernmgt.com'; 'Scott, Monica R'; 'Cordray, John A'
Subject: RE: Stained Concrete at Cato

Ken,

Brantley disagrees with the College of Charleston's position regarding the stain floor issue. A letter is forthcoming in response to your letter. Of immediate concern, we make demand that all undisputed amounts remaining on the contract be paid immediately. Our Pay Request No. 42 submitted on August 3 has not been processed by the College at this time. The College can make the necessary adjustments and make prompt payment. Thank you in advance for your consideration in this important matter.

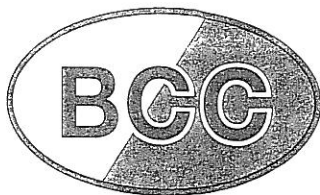
Best Regards,

Gary

-----Original Message-----

From: Foreback, Kenneth L [<mailto:ForebackK@cofc.edu>]
Sent: Tuesday, September 07, 2010 3:28 PM
To: gbrantley@BrantleyConstruction.com
Cc: TTerranova@BrantleyConstruction.com; rbeatty@southernmgt.com; Scott, Monica R; Cordray, John A
Subject: FW: Stained Concrete at Cato

The hard copy is in the mail.



Brantley
Construction
Company, LLC

November 15, 2010

Mr. Ken Foreback
College of Charleston
66 George St.
Charleston, SC 29424-0001

REF: CATO Stained Concrete Floor
Simons Center for the Arts Expansion, H15-9570-PG

Dear Mr. Foreback:

In response to the College of Charleston's letter dated September 7, 2010, Brantley Construction Company notified the College of Charleston in an email on September 8, 2010 of our disagreement with their position to withhold \$33,263.18 for the concrete floor in the CATO Center and a letter was forthcoming. This is our follow up response.

Brantley Construction Company has fully complied with the plans and specifications as modified by the Architect in the field. The Architect, per the contract, has the authority to modify, accept, and/or reject the work in question. Even if the Architect's authority for making the changes is disputed, which we deny, the Architect had the responsibility and duty to timely notify the contractor of unacceptable work. Clearly, timely notification did not occur.

Prior to applying the acid stain, a pre-construction meeting was held on site with the Architect, Brantley, and the subcontractor to discuss the details of the work. Among the items discussed was patching the concrete floor imperfections. The subcontractor noted acid stain will not have the same appearance on patched areas as compared to other areas and consequently, will draw attention to the patched areas, thus, causing them to stand out and be noticeable. If the imperfections are not patched, the areas will blend in with the surrounding acid stain floor. The decision was made during the pre-construction meeting to not patch the imperfections in the concrete floor. It is particularly notable that subsequent to the Architect's January 20, 2010 letter and through Brantley's effort to determine floor preparation costs for the new floor tile desired by the College, we were advised by all six contractors contacted and the stain manufacturer that acid stain will not give the same appearance in a patched area as compared to the surrounding non-patched area, confirming our subcontractor's comments.

After the pre-construction meeting, the subcontractor proceeded with the acid stain installation. The Architect made numerous site visits and on at least four occasions to specifically inspect the acid stain floors during the two month installation process. The

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brantley@brantleyconstruction.com

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inspections occurred: 1) during acid stain samples review, 2) immediately after the stain was applied, 3) after the sealer was applied, and 4) at completion/acceptance of the floor. At each inspection, the Architect pointed out items requiring additional work. These items were related to the acid stain finish and were corrected to the Architect's satisfaction prior to his acceptance. During the fourth inspection, a missing section of concrete control joint in the Student Gallery was discussed. Brantley Construction offered, at that time, to install the control joint. The Architect clearly indicated installing the joint would not be required. There were no other discussions during the meeting regarding the quality and installation of the concrete slab-on-grade.

The Architect's final punch list dated August 24, 2010 for the areas in question does not contain the items noted in the College's September 7 letter or Stevens and Wilkinson January 20, 2010 letter. The items listed for rejecting the concrete floor were in full view and easily observed during inspections, yet were not included in any inspection or punch lists. The Architect knew of these items prior to the acid stain work starting and could have required the imperfections be corrected, but failed to do so. Further, the Architect had the opportunity to require the imperfections be corrected during any of his numerous site visits or inspections while the work was in process. We contend this was not a mere oversight on the Architect's behalf, but his carrying out the agreement reached during the pre-construction meeting to not correct the imperfections.

The Architect, through his authority, approved the installation of the acid stain without requiring the imperfections in the concrete floor to be corrected. Proof of this is evidenced by the Architect's numerous inspections and visits to the jobsite throughout the two month installation process and not making any comment or requirement to correct the imperfections. He had multiple opportunities to stop the work had it not been in compliance with the agreement reached during the pre-construction meeting.


We were led to believe if we performed the work as agreed in the pre-construction meeting and performed the punch work, the floor would be accepted. Brantley Construction Company in the performance of the work, lived up to the "standard of care" expected and required.

Not until after the floor was complete and accepted by the Architect and after College of Charleston senior personnel voiced their displeasure that we were notified the concrete floor was unacceptable. It is well known, going back prior to the project solicitation for bids, that the College desired a high end tile type floor instead of acid stain. We believe the College would be just as dissatisfied, if not more so, if the floor was patched prior to acid staining. The reality is the College wants a tile floor.

Brantley is not responsible, at our expense, for making modifications to the concrete floor in order for the College of Charleston to obtain a floor more highly favored. Notwithstanding, we regret the College is displeased with the floor. It has always been Brantley's goal to please the College of Charleston and add them as another satisfied customer to our client list. To that end, we are willing to have meaningful discussions with College officials regarding a reasonable assistance toward the College obtaining their preferred floor.

We suggest a meeting be scheduled for further discussions in the hopes of reaching an agreement satisfactory to all parties. I will call within the next few days to schedule such a meeting.

Best Regards,


Gary D. Brantley,
Vice President

C Phil Gerald, OSE
Dean Morr, S & W
Ralph Beatty, CSMG

Gary Brantley

From: Foreback, Kenneth L [ForebackK@cofc.edu]
Sent: Wednesday, December 01, 2010 2:07 PM
To: TTerranova@BrantleyConstruction.com; gbrantley@BrantleyConstruction.com
Cc: Scott, Monica R; rbeatty@southernmgt.com; gerald@muscd.edu; Goff, Alyson M; Miehe, Ben K
Subject: FW: Cato Stained Floor Defects

From: Cordray, John A
Sent: Wednesday, December 01, 2010 2:05 PM
To: Foreback, Kenneth L
Subject: Cato Stained Floor Defects

Ken,

Mr. Osborne is convalescing at home from his recent surgery and I do not have any idea of his schedule for the remainder of the year. However, I am willing to meet with Gary and Tom provided that SMG and S&W are present. The following information was gleaned from the project files pertaining to the subject issue:

- 20 Jan 2010: Colored Concrete floor rejection letter issued by S&W
- 10 Aug 2010: Letter from CofC to S&W requesting recommendation and cost for correction of defective work.
- 25 Aug 2010: Letter from S&W to CofC transmitting the recommended fix with cost estimate.
- 1 Sept 2010: Letter from CofC to Brantley Construction indicating our intent to withhold recommended amount of \$33,263.18
- 15 Nov 2010: Letter from Brantley Construction to CofC protesting the deduction.

Based on the above information, I do not believe there are any merits in additional meetings. Suggest the contractor exercise his rights through appropriate means stipulated in the construction contract.

John

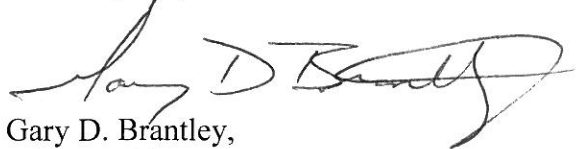


Certified return receipt no. 91 7108 2133 3936 6434 1811

Brantley Construction Company, LLC is a trade name of Brantley Construction Services, LLC

Please call to schedule a time and location to meet or if you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Gary D. Brantley". The signature is fluid and cursive, with the first name "Gary" being more legible than the last name "Brantley".

Gary D. Brantley,
Vice President

cc: Phil Gerald, OSE
Monica Scott, C of C
John A. Cordray, Jr., C of C
Ralph Beatty, SMG
Dean Moor, S&W
Tom Terranova, BCC-PM



Brantley
Construction
Company, LLC

March 4, 2011

Mr. John C. White, P.E.
State Engineer
1201 Main Street Suite 600
Columbia, South Carolina, 29201

Subject: Request for Resolution of Contract Controversy, College of Charleston
State Project # H19570-PG, Simons Center for the Arts Expansion

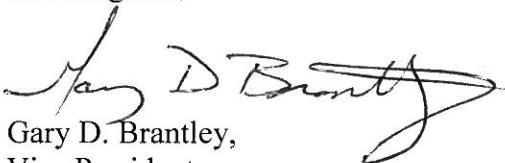
Dear Mr. White:

Brantley Construction Company, LLC (BCC) acknowledges receipt of the College of Charleston's (College) letter dated March 3, 2011 addressed to you. We requested to amend our original contract controversy request to include unresolved issues because it is proper and makes the best use of our strained state resources while minimizing costs to the College and BCC. I do not understand why all issues can not be addressed at the same time.

All of the COR's listed, with the exception of COR 148, have been addressed several times to no avail with the College, Architect of Record and Construction Manager. They have not been individually addressed with the local OSE Project Manager. In my letter to you of February 28, I requested a meeting be scheduled to try to resolve the outstanding COR's with the College and local OSE Project Manager prior to the scheduled March 24 contract controversy hearing. Based on the College's statement that they stand ready to aid in the resolution of any outstanding issues, Brantley is available to meet with College personnel and the local OSE Project Manager prior to the March 24 hearing to resolve the issues.

Please call to schedule a time and location to meet or if you have any questions.

Best Regards,



Gary D. Brantley,
Vice President

cc: Phil Gerald, OSE
Monica Scott, C of C
John A. Cordray, Jr., C of C
Ralph Beatty, SMG
Dean Moor, S&W
Tom Terranova, BCC-PM

3-4-11 johnwhitestateengr

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brantley@brantleyconstruction.com

Brantley Construction Company, LLC is a trade name of Brantley Construction Services, LLC

Settlement Agreement

RE: Simons Center for the Arts
H15-9570-PG
College of Charleston
Charleston, SC

SEP 01 2011

OFFICE OF STATE ENGINEER

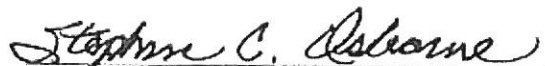
Date: August 31, 2011

The letter to request mediation was forwarded by Brantley Construction (Brantley) to the Office of State Engineer on 13 December 2010. An amended request was forwarded by Brantley on 28 February 2011.

This Agreement is reached through mutual understanding of the issues causing the dispute and a mutually agreed-upon resolution concerning all the items related to the dispute.

The Brantley amended letter listed seven items of controversy, including the original item. This Agreement consists of: 1) a payment of \$47,739 (items #1 (\$5,177), #6 (\$18,598), the amount of COR 151 (\$8,964), and \$15,000) will be forwarded to Brantley to satisfy the controversy, 2) the remaining balance in the construction contract (\$33,570.29) will be retained by the College of Charleston, and 3) the Agreement satisfies all claims, ends the controversy, is an end to any future Change Order Requests, and closes the contract.

Stephen C. Osborne
Executive Vice President for Business Affairs,
College of Charleston



Gary D. Brantley
Vice President, Brantley Construction Company, Inc.

